IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 49 of 1985

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SWAMI VAISHASVACHARYA GURU - RAMPRATAPDASJI & 3 - Appellant(s)

Versus

CHAITANYAPRASAD @ CHATANKUMAR CHHAGANLAL & 2 - Defendant(s)

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Appearance :

MR PV NANAVATI for Appellant(s) : 1,
MR SURESH M SHAH for respondents 1 - 2.
NOTICE SERVED for respondent 3.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 18/01/2006

ORAL JUDGMENT

1. This First Appeal arises out of a judgment and decree rendered by the learned Judge presiding over Court

No.7 of the City Civil Court, Ahmedabad, on 18th and 19th March, 1984, in Civil Suit No.1850 of 1980, dismissing the suit of the plaintiffs-appellants.

2. The plaintiffs are the trustees of a trust known as “Tran Devdi Ramji Mandir Trust” and the suit was filed for recovery of possession of a room bearing Municipal Census No.750/11 and Survey No.22/14 from defendants No.1 and 2 herein and also for mesne profits from the date of the suit till recovery of possession.

2.1 The case of the plaintiffs has been that the plaintiffs and defendant No.3 are trustees of the said Trans Devdi Ramji Mandir Trust, which is registered with the Deputy Charity Commissioner, Ahmedabad. Defendant No.3 and defendants No.1 and 2 happen to be relatives and, therefore, though defendant No.3 was the trustee, he did not agree to filing of the suit for recovery of possession from defendants No.1 and 2 of the suit premises. He was, therefore, joined as defendant No.3. According to the plaintiffs, the suit premises was given to the father of defendants No.1 and 2 for his residence on compassionate ground. Father of defendants No.1 and 2 was a devotee of the temple and was rendering services in

the temple work and, out of love and affection, the then Mahant of the temple, Rampratapdasji, permitted father of defendants No.1 and 2 to reside in the suit premises. Thus, it is the case of the plaintiffs that the father of defendants No.1 and 2 was inducted as a licensee. Father of defendants No.1 and 2 expired in 1975, but defendants No.1 and 2 continued to be in possession. The conduct of defendants No.1 and 2 was detrimental to the interest of the temple and were entering into disputes with the trustees and other persons of the temple. Defendants No.1 and 2 claim tenancy rights in respect of the suit property, though they are, in fact, not tenants. They were served with a notice on 27th May, 1980 by the plaintiffs as the plaintiffs did not want to continue them in the suit premises. The said notice was refused by defendants No.1 and 2. Though possession was demanded by the plaintiffs from defendants No.1 and 2 repetitively, no heed was paid. According to the plaintiffs, defendants No.1 and 2 are being instigated by defendant No.3, who came to be evicted from one of the trust properties.

3. On the other hand, the case of defendants No.1 and 2, as emerging from written statement, Ex.11, has

been that, their father was tenant of the suit premises and, on his demise, they have also become tenants. It is also contended that they have been in possession of the suit premises for more than 50 years under tenancy rights. A dispute on jurisdiction of the Court was also raised in the written statement.

4. The Trial Court, after considering rival side pleadings, framed issues at Ex.58 as under :-

"(1) On the plaintiffs prove that defendants Nos. 1 and 2 were licensees in respect of the suit premises and on termination of their licence, they have become trespassers?

(2) Do defendants Nos.1 and 2 prove that their father was a tenant in respect of the suit premises and on his demise they have become its tenants by operation of law?

(3) Do defendants Nos.1 and 2 prove that this Court has no jurisdiction to try this suit?

(4) What relief or reliefs, if any, are the plaintiffs entitled to claim in this suit?

(5) What final order and decree?"

5. The findings of the Trial Court on the above issues were as under :-

"(1) In the negative.

(2) Not necessary to decide.

(3) In the negative. This Court does have jurisdiction to try this suit.

(4) None

(5) As per final order."

6. The Trial Court found that there is no documentary evidence to suggest the nature of relationship between the parties, but it was noticed that defendants No.1 and 2 have been in exclusive possession of the suit premises from the time of their father who was inducted into the premises. The Court also noticed that the occupation of the premises is for more than 50 years. The Court noticed that so far as the oral evidence is concerned, the two parties have deposed against each other, but the case of the defendants gets an additional support from a witness, who was examined at Ex.86. The Court also observed that the plaintiff could not have any personal knowledge about as to how father of defendants No.1 and 2 was inducted and on what terms and

conditions. Keeping all these factors in mind, the Trial Court, ultimately, came to a conclusion that the plaintiffs could not prove that defendants No.1 and 2 were licensees in respect of the suit premises and that on termination of the licence, they became trespassers. The very foundation of the plaintiffs' suit having not been accepted by the Trial Court, the suit, ultimately, came to be dismissed, which has given rise to the present appeal.

7. Learned Advocate, Mr. P. V. Nanavati, appearing for the appellants-plaintiffs took this Court through the evidence from the record and proceedings and also read over the impugned judgment. According to Mr. Nanavati, the Trial Court committed an error in drawing presumptions and inferences in favour of defendants No.1 and 2. Certain aspects have been examined by the Court, though no specific plea is taken by defendants No.1 and 2 in the written statement. Mr. Nanavati also contended that the Trial Court considered non-production of register of tenants as a factor going against the plaintiff-appellant, but no production notice was served on the plaintiffs by the defendants and, as such, adverse inference could not have been drawn. It is also

contended that exclusive possession of the suit premises by defendants No.1 and 2 has been given undue weightage by the Trial Court. He, therefore, submitted that in absence of any documentary evidence, the Trial Court could not have thrown away the plaintiffs' case on mere inferences. Mr. Nanavati submitted that for arriving at a conclusion in such a situation, peripheral circumstances and conduct of parties would be relevant. The Court overlooked the fact that the books of accounts do not indicate the name of defendants No.1 and 2 as tenants and they have not paid any rent up-till-now. It is also submitted that the contention regarding sending of Money Order is not supported by any material. He, therefore, submitted that the appeal may be allowed.

8. Learned Advocate, Mr. Shah, for the respondents submitted that, undisputedly, there is no documentary evidence. Without any dispute, defendants No.1 and 2 have been in possession of the suit premises through their father before 1950. So far as the oral evidence is concerned, it is a case of word against word, which counter the deposition of the plaintiffs and the defendants, but the defendants' version gets support from an independent witness examined at Ex.86, who has no

reason to give a favourable deposition. Mr. Shah submitted that the plaintiff, who deposed could not have had any personal knowledge as to how father of defendants No.1 and 2 was inducted, i.e. whether as a tenant or as a licensee. He also submitted that the version of the defendants in their deposition that they had sent Money Order, which was refused by the plaintiffs-appellants, is supported by documentary evidence at Ex.48 and 49. Additionally, this version has remained uncontroverted in the cross-examination. Mr. Shah has relied on the following decisions in support of his case :-

(1) Delta International Ltd. v. Shyam Sunder Ganeriwalla and Another, AIR 1999 SC 2607.

(2) Sherif Dadumiyaji v. Emperor, AIR 1930 Bombay 165.

(3) Mohan Sons (Bombay) Private Ltd. v. Lady Sonoo Jamsetji Jejeebhoy, AIR 1976 Bombay 417.

He submitted that where there is no documentary evidence to facilitate the naming of the relationship between the parties, the court has to examine surrounding circumstances and conduct of parties to decide the same. Mr. Shah, therefore, submitted that the Trial Court took into consideration all these aspects and arrived at a

conclusion which cannot be considered as a legally perverse view nor can it be considered as an absurd conclusion which may call for interference at the hands of the First Appellate Court. He, therefore, submitted that the appeal may be dismissed.

9. In rejoinder, learned Advocate, Mr. Nanavati, submitted that none of the decisions relied upon by learned Advocate, Mr. Shah, are relevant to the present case. According to Mr. Nanavati, the principle in those cases was out of a situation where there was documentary evidence. In the instant case, there is no documentary evidence at all and, therefore, the decision may not be of any help to the respondents. Mr. Nanavati submitted that the account books contained accounts of the tenants and names of defendants No.1 and 2 or their father did not figure anywhere and, therefore, the Trial Court committed an error in drawing adverse inference on account of non-production register of tenants. He, therefore, submitted that the appeal may be allowed.

10. The question that this Court will have to examine would be, whether from the evidence, it can be said that the plaintiffs-appellants were successful in

establishing that father of defendants No.1 and 2 was inducted as a licensee and not as a tenant, as is pleaded by the other side.

11. This Court has examined the record and proceedings and, at the outset, it may be noted that, undisputedly, there is no documentary evidence which would facilitate deciding the nature of relationship between the parties. There is also no dispute on the aspect that the father of defendants No.1 and 2 was inducted in the suit premises prior to 1950 and continued to be in exclusive possession thereof till he died in 1975 and, thereafter, defendants No.1 and 2 have continued to be in possession of the premises.

12. The plaintiffs have tried to establish their case on the basis of the oral version at Ex.80. Plaintiff-Vaishnavacharya, in his deposition, stated that the room was given to father of defendants No.1 and 2 by him and his Guru on leave and licence basis, as he was rendering assistance in the administration of the trust and as his financial condition was not good. It is also stated that, after demise of their father, defendants No.1 and 2 were not doing any work of the trust or the

temple and were quarrelling with the plaintiffs. It is also stated that the plaintiffs have not accepted any rent from defendants No.1 and 2 or their father at any point of time. The books of accounts produced on record did not contain any entry to show that any rent was paid by defendants No.1 and 2 or their father. He stated that he did not accept the Money Order at Ex.48 and 49. sent by defendants No.1 and 2 as they were not the tenants. During cross-examination, he admitted that, after joining his Guru in 1922, he went to Kashi for studies and he was staying in the temple from 1967. Prior thereto, he was staying in Ahmedabad in another house, at Panderi Pole. He states that he stayed in that house till 1975. He also admitted that his Guru expired in 1975. He, however, denied the suggestion that he entered into the management of the trust only after demise of his Guru in 1975. He admitted that he did not know when father of defendants No.1 and 2 was inducted in the suit premises. He also admitted that the suit premises has been in exclusive possession of father of defendants No.1 and 2 and, thereafter, in possession of defendants No.1 and 2.

13. Defendant No.1 gave his deposition at Ex.85, where he stated that they were not being given receipt

from the beginning although he admitted that other tenants were given such receipts. He admitted that, in his written statement, he had taken a contention that if books of accounts of the trust were examined, the rent would be found to have been credited. He denied the fact that Guru of the plaintiff had lost vision for last 10 years of his life and that the plaintiff was looking after the management.

14. Thus, it is clear that the depositions of the plaintiffs and the defendants do not carry the case of either side any further except the fact that defendants No.1 and 2 had sent Money Order in the year 1980 to the plaintiffs, which was refused by them. This fact is admitted by plaintiff No.1 in his deposition and is supported by documentary evidence as well.

15. The case of the defendants gets support from deposition of witness, Valmaben Dhulaji, at Ex.86. She stated that she was serving with Himabhai Mill. She also stated that she knew the parties and defendants' father was staying in the suit premises as a tenant. He was working in a mill and besides that, he was not doing any other work. She stated that she was a tenant of one of

the properties of the plaintiffs. She stated that Guru of the plaintiff had lost vision only two years prior to his demise and not ten years prior thereto and the plaintiff started to look after the management only after the demise of his Guru. She stated that she had seen the father of defendants No.1 and 2 paying rent on a number of occasions, but she did not know as to whether the receipts were given to him or not.

16. Thus, the case of the defendants becomes more weighty than the case of the plaintiffs from the deposition of witness, Valmaben (Ex.86), who is also one of the occupants of the property of the trust as tenant.

17. In the case of **Delta International Ltd. v. Shyam Sunder Ganeriwalla and Another 1999 SC 2607**, the Apex Court has held that in absence of a written document and when somebody is in exclusive possession with no special evidence how he got the possession is to be gathered from the other evidence which may be available on record and in such cases, exclusive possession of the property would be the most relevant circumstance to arrive at the conclusion that the intention of the parties was to create a lease. With this settled proposition of law, if

the circumstances in the present case are seen, what emerges is that, father of defendants No.1 and 2 had been in exclusive and continuous occupation of the suit premises even prior to 1950 till 1975, when he died and, thereafter, defendants No.1 and 2 have been in continuous and exclusive occupation of the suit premises.

18. There is no evidence of independent nature to know as to in what capacity the father of defendants No.1 and 2 was inducted, although it is asserted by the plaintiff that he was inducted as a licensee. But this oral version has not found favour with the Trial Court and rightly so, when it emerges from the plaintiff's own deposition that he did not know as to when father of defendants No.1 and 2 occupied the premises. He saw him for the first time in 1950. It also transpires from his evidence that after joining his Guru in 1920, he went to Kashi for education and, thereafter, he was staying in the temple from 1967. Prior to 1967, he was staying in a house of one Bai Dahi, at Panderi Pole, Kalupur Chakla, till 1975 and in 1975, his Guru expired. The version that is given by defendants' witness, Valmaben, in her cross-examination that plaintiff No.1 came into management of the trust only after the demise of his Guru

gets corroborated from the fact that plaintiff No.1 was staying in the house of Bai Dahi till 1975 and came to the temple only in the year 1975, after the demise of his Guru. The outcome is that plaintiff No.1 could not have known the capacity in which father of defendants No.1 and 2 was inducted.

19. It is also emerging that, in the deposition of the plaintiff, a specific question was put regarding maintaining of register of tenants, which is answered by him in the affirmative. Nothing prevented the plaintiff from producing this document which could have negatived the case of the defendants about the tenancy, if there was no name in the registry. It is true that the plaintiff was not called upon to produce the same, but it is the plaintiff who approached the Court with a plea that the defendants are licensees and the defendants have come with a case that they are tenants. In this background, if this admission of his is viewed seriously, it was necessary for him to have produced the register of tenants which could have proved his case or differently put, which could have disproved the case of the defendants. This becomes more important when there is no other cogent evidence to facilitate the deciding of

natural of relationship between the parties.

20. As rightly held by the Trial Court, there is no reason to disbelieve the version of defendants' witness, Valmaben. She cannot have any special interest in defendants No.1 and 2. The cumulative effect of all this is that, the defendants are in exclusive possession and that they are in exclusive possession for a period relatable prior to 1950; that the plaintiffs have no documentary evidence or other evidence to show as to how father of defendants No.1 and 2 was inducted and in what capacity; and that the plaintiffs could not have had any personal knowledge about it and, therefore, it cannot be said that the Trial Court committed any error either of law or of fact in dismissing the suit. The appeal, therefore, must fail and stands dismissed. No costs.

[A. L. DAVE, J.]

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